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1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF DELAWARE
 3
 4 PHILLIPS, L.G., LCD CO., LTD,)
 5 Plaintiffs,)
 6 v.)
 7 TATUNG CO., TATUNG COMPANY OF)
 8 AMERICA, INC., and VIEWSONIC)
 9 CORPORATION,)
 10 Defendants.)

11 Hearing of above matter taken pursuant to
 12 notice before Renee A. Meyers, Registered Professional
 13 Reporter and Notary Public, in the law offices of BLANK
 14 ROME, LLP, 1201 North Market Street, Wilmington,
 15 Delaware, on Wednesday, February 28, 2007, beginning at
 16 approximately 6:05 p.m., there being present:
 17 BEFORE: VINCENT J. POPPITI, SPECIAL MASTER

18 APPEARANCES:

19 THE BAYARD FIRM
 20 RICHARD D. KIRK, ESQ.
 21 222 Delaware Avenue, Suite 900
 22 Wilmington, Delaware 19899
 23 for Plaintiffs

24 CORBETT & WILCOX
 25 Registered Professional Reporters
 26 230 North Market Street Wilmington, DE 19899
 27 (302) 571-0510
 28 www.corbettreporting.com
 29 Corbett & Wilcox is not affiliated
 30 with Wilcox & Fetzer, Court Reporters

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1 APPEARANCES (Continued):
 2 MCKENNA, LONG & ALDRIDGE, LLP
 3 CASS W. CHRISTENSON, ESQ.
 4 REL S. AMBROZY, ESQ.
 5 DEREK AUITO, ESQ.
 6 GASPARE BONO, ESQ.
 7 1900 K Street, N.W.
 8 Washington, D.C. 20006
 9 for Plaintiffs

10 RICHARDS LAYTON & FINGER
 11 FREDERICK L. COTTRELL, III, ESQ.
 12 ANNE SHEA GAZA, ESQ.
 13 One Rodney Square
 14 Wilmington, Delaware 19801
 15 for Defendant Tatung Co.
 16 GREENBERG TRAURIG LLP
 17 FRANK MERIDETH, ESQ.
 18 VALERIE HO, ESQ.
 19 MARK KREISMAN, ESQ.

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12 AL JANSEN, ESQ.
 13 2450 Colorado Avenue, Suite 400E
 13 Santa Monica, California 90404
 14 for Defendant Tatung Company of America, Inc.
 15
 15 CONNOLLY BOVE LODGE & HUTZ LLP
 16 JAMES D. HEISMAN, ESQ.
 16 1007 North Orange Street
 17 Wilmington, Delaware 19899
 17 for Defendant Viewsonic Corporation
 18
 18 BINGHAM McCUTCHEN LLP
 19 SCOTT R. MILLER, ESQ.
 19 TRACY ROMAN, ESQ.
 20 MANUEL NELSON, ESQ.
 20 355 South Grand Avenue
 21 Los Angeles, California 90071-3106
 21 for Defendant ViewSonic Corporation
 22
 23
 24

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1 SPECIAL MASTER POPPITI: The way we left
 2 it the last time we were on the teleconference, as I
 3 understood it, there were some questions that, perhaps,
 4 or issues that remained open with respect to deposition
 5 scheduling. I am not aware of any other agenda items for
 6 this evening other than the document that I received by
 7 email from Mr. Cottrell, with today's date, and I
 8 received that document and advised everyone, by return
 9 email, that it should be the subject of some discussion
 10 this evening.

11 MR. AMBROZY: Your Honor, this is Rel
 12 Ambrozy for LPL in Washington. The other topic we wanted
 13 to address with Your Honor is a motion, and we addressed
 14 this last time, there was a motion filed by Tatung
 15 defendants in regard to the protective order, and we did
 16 not agree on a date for when LPL would respond to that
 17 and then it would be argued before Your Honor. And then
 18 tied into that is Tatung's refusal to produce anymore
 19 discovery until that issue was decided.

20 So, we wanted touch on that, as it
 21 pertains to categorization, which was somewhat left
 22 untouched when we finished last time.

23 SPECIAL MASTER POPPITI: If that's the
 24 firms item in que before we get to issues involving

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1 deposition, then let's do that. And I don't think I need
 2 to, unless you tell me that I should, I did not bring
 3 into the conference room where I am sitting the paper
 4 dealing with those issues. I think I remember it clearly
 5 enough not to have to go get them, but if it becomes
 6 important to get them, I just need a moment to go back
 7 down the hall again.

8 MR. AMBROZY: That's okay.

9 SPECIAL MASTER POPPITI: Go ahead,
 10 please.

11 MR. MERIDETH: That is Frank Merideth on
 12 behalf of the Tatung defendants. I believe that the
 13 motion has not been correctly characterized. That is not

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14 the relief that we seek. We are not suspending any
 15 production of documents that have been ordered to be
 16 produced. Our motion related to the ending motions that
 17 relate to whether or not Tatung defendants should be
 18 required to produce documentation respecting non-accused
 19 products.

20 SPECIAL MASTER POPPITI: I understand.

21 MR. MERIDETH: And we have suggested
 22 that until this issue with respect to the protective
 23 order, and particularly the use of confidential documents
 24 by patent prosecutors be resolved until, at any time, if
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1 we are going to be required to produce information about
 2 non-accused products, that we at least have the minimal
 3 protection of producing it only to the litigation team
 4 and not the patent prosecution team.

5 SPECIAL MASTER POPPITI: Did someone
 6 just join?

7 MR. KREISMAN: Mark Kreisman from
 8 Greenberg Traurig.

9 SPECIAL MASTER POPPITI: Thank you, sir.

10 MR. KREISMAN: Good afternoon.

11 SPECIAL MASTER POPPITI: Good afternoon.

12 MR. MERIDETH: We are not refusing to
 13 produce this document. We are saying that that needs to
 14 be taken into account with regard to the pending motions
 15 to compel the production of documents.

16 SPECIAL MASTER POPPITI: I think what I
 17 was hearing, then, was the question as to when there
 18 should be a responsive document to the most recent -- to
 19 your most recent application to take that issue into
 20 consideration in deciding the underlying motion. And
 21 what I simply need from LPL is: Tell me when, I'd like
 22 it sooner than later, because I would want to be getting
 23 out something on the underlying motion not later than the
 24 end of next week.

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1 MR. AMBROZY: And just to be clear, Your
 2 Honor, which underlying motion?

3 SPECIAL MASTER POPPITI: This is the
 4 motion that deals with the issue as to whether there
 5 should be production beyond the accused products;
 6 correct, Mr. Merideth?

7 MR. MERIDETH: Yes, sir.

8 MR. AMBROZY: Your Honor --

9 SPECIAL MASTER POPPITI: Again, I don't
 10 have, for purposes of describing what it looks like, the
 11 trolley of documents that I have to work from in the room
 12 with me at this point so I can't tell you the date of
 13 that motion.

14 MR. AMBROZY: I believe that was January
 15 24, Your Honor. The first motion that LPL filed to
 16 compel the additional documents was January 24th.

17 SPECIAL MASTER POPPITI: So the question
 18 is when should the issue be considered joined by virtue
 19 of a last filing, and what I am suggesting to you is I
 20 would like that issue to be joined as soon as possible so
 21 that I can turn to what will need to be a document as
 22 opposed to anything simply on the record. And I'd like
 23 to get closure on that by the end of next week if not
 24 sooner.

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1 MR. AMBROZY: I agree, Your Honor. And
 2 I believe the end of next week is the 9th, on which we
 3 are having the hearing in Delaware also in support of
 4 that motion.

5 SPECIAL MASTER POPPITI: That's correct.
 6 MR. AMBROZY: So, if we were to get you
 7 a paper by the 9th, at the latest, does that work for
 8 Your Honor? Or if I am hearing you correctly, you want
 9 it earlier than that?

10 SPECIAL MASTER POPPITI: I'd like it
 11 sooner.

12 MR. AMBROZY: If we get it by the 6th,
 13 is that okay?

14 SPECIAL MASTER POPPITI: The 6th is
 15 fine.

16 MR. AMBROZY: Thank you, Your Honor.
 17 So, if I understand Mr. Merideth, then, they are not
 18 withholding documents at this point. But what we were
 19 more focused on was the categorization issue. And it's
 20 our understanding -- we have had discussions with Tatung
 21 and Tatung has agreed in the past to provide
 22 categorizations, and Your Honor referred to a specific
 23 citation, I don't have it in front of me, but you did
 24 read from the record and ask whether LPL agreed with the

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1 categorizations that were represented by Tatung were
 2 produced.

3 SPECIAL MASTER POPPITI: I missed that.
 4 I think somebody may have been turning a page.

5 MR. AMBROZY: During the last hearing,
 6 Your Honor read from the transcript, and I believe it was
 7 December 28th transcript, where you asked if LPL had
 8 received a categorization that Tatung represented it
 9 would produce.

10 SPECIAL MASTER POPPITI: Yes.

11 MR. AMBROZY: We had told Your Honor
 12 that we had not. And, in addition, we have not received
 13 new -- a new categorization of the additional monitors
 14 and products that Tatung has identified in supplemental
 15 interrogatory responses. And, so, we just want to be
 16 clear that those will still be forthcoming from Tatung
 17 regardless of when this motion is decided.

18 SPECIAL MASTER POPPITI: Mr. Merideth?

19 MR. MERIDETH: I believe that we have
 20 provided what we believe is responsive to the commitment
 21 that was made by Miss Ho at the hearing, I believe it was
 22 on the 28th.

23 SPECIAL MASTER POPPITI: It was.

24 MR. MERIDETH: And we have lived up to

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1 that commitment. We have provided representative
 2 products and the products of which they are
 3 representative.

4 What we have not agreed to is the
 5 definition that LPL wants us to use, and we don't believe
 6 that we are required to use their definitions, we don't
 7 agree with their definitions, and we have provided them
 8 with schedules that include the representative modules --
 9 the representative products and the products that are

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10 within the family, if you will, of that representative
 11 product, and we have identified the working drawings that
 12 relate to that family of products.

13 We believe that that's what Miss Ho
 14 promised to do and we have done it.

15 MR. AMBROZY: Frank, let me point you to
 16 -- there is a February 15th letter from Miss Ho where she
 17 states, on the first page --

18 SPECIAL MASTER POPPITI: Can you expect
 19 that I would have that by virtue of what I have told you
 20 I have in the room? I don't think I would.

21 MR. AMBROZY: You do not, Your Honor.

22 SPECIAL MASTER POPPITI: It would be
 23 important, please, to tell me what it says, and if
 24 Mr. Merideth thinks it needs to placed in context by

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1 telling me or framing it with other language from the
 2 document, I am sure he will. The document again, please?

3 MR. AMBROZY: It is a February 15th
 4 letter from Valerie Ho to myself.

5 SPECIAL MASTER POPPITI: Okay.

6 MR. AMBROZY: And in that, we discuss
 7 whether there were drawings to be produced by Tatung.
 8 And then Ms. Ho, in regard to the categorization, she
 9 states, "You should have received a few additional
 10 assembly drawings that were produced early this week. We
 11 should be in a position next week to provide an updated
 12 table that will attempt to align new drawings with new
 13 groupings of products."

14 And then, with regard to the next page,
 15 page 2, Miss Ho goes on to say that they would not update
 16 anymore categorizations until LPL agrees that it will not
 17 require two exploded view drawings for each category
 18 instead of the one.

19 So it's our understanding that, first of
 20 all, all the new products identified in interrogatories
 21 one and two by Tatung are not in this new chart, and even
 22 on February 15, Miss Ho identifies that there are
 23 additional products that are not listed on the chart.

24 So, I don't know if you would like us to

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1 take this up with Mr. Merideth on the side, Your Honor,
 2 but we are of the position that the charts are not --
 3 that the categorizations are not up-to-date.

4 SPECIAL MASTER POPPITI: It's not a
 5 matter of my preferring that you do that. I think, from
 6 my perspective, if the issue is ultimately going to come
 7 down to this is what we think the agreement was and there
 8 is a difference of opinion as to what the agreement was,
 9 then part of the issue I have to visit is -- I know I
 10 have the authority to enforce an agreement as it relates
 11 to discovery. I need to make a determination as to what
 12 the agreement was and is. And once that's done, I need
 13 to make a determination as to whether that agreement, as
 14 I conclude it is, has been lived up to.

15 I am not relishing that path forward,
 16 but, if necessary, you know, I will do that. I don't
 17 think the record, at this point, as you have put it
 18 before me, puts it in a posture for me to be doing that
 19 kind of work.

20 Do you both agree with that?

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21 MR. AMBROZY: I agree with that, Your
22 Honor. I would suggest that we may do a supplemental
23 briefing in advance of the March 9th hearing.
24 SPECIAL MASTER POPPITI: If you need to
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1 do it, I mean, it seems to me, and please correct me if
2 you think I am wrong, the heart of the hearing that we
3 are going to be conducting next week frames these issues,
4 does it not?

5 MR. AMBROZY: It does, Your Honor.
6 SPECIAL MASTER POPPITI: Mr. Merideth.
7 MR. MERIDETH: Yes, sir, I agree it
8 does.

9 SPECIAL MASTER POPPITI: So, if you both
10 think that it is important for me to dissolve the issue
11 as to what the agreement was, therefore, is, and what it
12 means going forward or what it means with respect to
13 compliance, and that's part of the March 9 hearing, then,
14 sure, I am going to have to require that you put a paper
15 together with that context in mind, short pages, and in
16 very short order, because I know that you all have very
17 important work that is ongoing, and I know that it will
18 represent some distraction from that work. But if it's
19 important to do it, tell me now and I will give you
20 parameters in terms of what I need and when.

21 MR. MERIDETH: I believe that it is
22 important that it be queued up most efficiently and
23 effectively before the Court, so I would suggest that we
24 agree upon some dates.

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1 SPECIAL MASTER POPPITI: Okay. Why
2 don't you forge the agreement.
3 MR. MERIDETH: We will do that.
4 SPECIAL MASTER POPPITI: Do you want to
5 do that off-line?

6 MR. AMBROZY: That's fine.
7 SPECIAL MASTER POPPITI: Okay. I am
8 happy to let that occur and I'd like to be aware of what
9 that is, without sounding unrealistic, as soon as
10 possible in the new day, if you will. Okay?
11 MR. MERIDETH: Okay.

12 MR. AMBROZY: Okay. Your Honor, one
13 other point in that the Delaware hearing is the 9th, and
14 because we begin Tatung's depositions on the 14th, we
15 were hoping just to bring to the Court's attention the
16 fact that we could possibly run out of time before the
17 documents are either ordered produced or collected and
18 produced, and, so, our depositions would have occurred by
19 the time the documents are actually produced. And, so,
20 we might run out of time at the end of March 30th. And I
21 just want to make the Court aware that we believe it
22 would be entitled to additional time to take discovery if
23 the Court finds that additional documents should have
24 been produced all along.

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1 SPECIAL MASTER POPPITI: I mean, I would
2 expect that you would expect, even though I have proposed
3 to Judge Farnan -- and, by the way, footnote, he is not
4 available, as of this date, he is out of state, hopefully
5 enjoying himself a bit, he will be back next week, and

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6 that's when I will have an opportunity to sit down with
 7 him -- even though you know I have proposed a scheduling
 8 order that keeps everyone focused on very, very, very
 9 tight time frame, I would expect that you know me,
 10 through local counsel, as to be a reasonable person. So
 11 I don't think I should be saying any more than that.

12 MR. AMBROZY: That's fine. Thank you.

13 SPECIAL MASTER POPPITI: That could be a
 14 reasonable yes, it could be a reasonable no, but I hope I
 15 am considered to be a reasonable person.

16 Okay. Next, please.

17 MR. CHRISTENSON: Your Honor, on a
 18 follow-up note, there were some -- there is some
 19 discovery outstanding from Tatung Company that had been
 20 agreed to be produced to us by the end of January, and we
 21 are now at the end of February, and I am concerned, as
 22 the deposition dates for Tatung draw near, that we don't
 23 have the bulk of the discovery that was agreed to be
 24 provided to us during the prior hearings before you in

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1 January.

2 SPECIAL MASTER POPPITI: Is that in the
 3 status report that we will be dealing with on Friday?

4 MR. CHRISTENSON: It's in the status
 5 report that is pending and still unresolved from the
 6 prior hearing as well as in the continued status report
 7 for the next hearing.

8 SPECIAL MASTER POPPITI: You tell me the
 9 most efficient way to deal with that. It seems to me
 10 that the most efficient way is to make sure that whatever
 11 work we set out to do on Friday, we encompass everything
 12 from the February, and I expect that's what we are
 13 working from, February -- is it 7 status and the current
 14 status -- February 5, I am sorry?

15 MR. CHRISTENSON: Yes, Your Honor. So,
 16 you know, things like sales summaries for all their
 17 products, you know, I am happy to address that now. If
 18 you prefer to address it on Friday, we can do that as
 19 well.

20 SPECIAL MASTER POPPITI: I want to do it
 21 as efficiently as possible, and if everyone is prepared
 22 to do it now and discuss it now, that's fine, because
 23 there was no agenda other than my expectation we were
 24 going to be focused on depositions. Tell me.

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1 MR. CHRISTENSON: We certainly have had
 2 several communications with Tatung on this issue, Your
 3 Honor, so I think we are aware of what the -- I think we
 4 have made them aware of what we are still waiting for.
 5 It's just a matter of how to get it.

6 SPECIAL MASTER POPPITI: Let's talk
 7 about it, then.

8 MS. ROMAN: Your Honor, this is Tracy
 9 Roman for ViewSonic. My only concern is that ViewSonic
 10 also has similar issues that are in the loop on the
 11 status report --

12 SPECIAL MASTER POPPITI: Right.

13 MS. ROMAN: -- that have been pending
 14 from previous status reports regarding production of
 15 documents from LPL, and if we are going to take the
 16 opportunity to go through all this stuff right now, it

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17 might go on a little bit longer than anybody is willing
 18 to participate.

19 SPECIAL MASTER POPPITI: I understand
 20 that. I expected this evening would be something to keep
 21 matters moving, but I didn't expect we were going to be
 22 here for more than a healthy hour and a half or so, maybe
 23 two hours. So, let's do it on Friday.

24 MR. CHRISTENSON: Very well, Your Honor.

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1 SPECIAL MASTER POPPITI: And if there is
 2 a need to more tightly focus on it between now and Friday
 3 in light of the statuses, tell me that. Other than
 4 hearing that, I have got the February report in mind, and
 5 I only briefly looked at the report that was filed, I
 6 don't know whether it was yesterday or the day before
 7 yesterday, I haven't turned my attention to it, for
 8 purposes of Friday. It was filed on the 26th.

9 MR. CHRISTENSON: The only other thing I
 10 would offer, Your Honor, is, if you are interested, there
 11 is a handful of letters back and forth. If you would
 12 prefer to have that in advance --

13 SPECIAL MASTER POPPITI: I'd like to
 14 have that in advance.

15 MR. CHRISTENSON: We will put that
 16 together and submit it to Your Honor.

17 SPECIAL MASTER POPPITI: Thank you.

18 Next, please.

19 MR. MERIDETH: We have an issue with
 20 respect to the scheduling of the depositions.

21 SPECIAL MASTER POPPITI: Okay.

22 MR. MERIDETH: Particularly, there is --
 23 there have been depositions of Mr. Ho Lee and Mr. Bang
 24 that have been scheduled, and LPL has indicated that they

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1 are not going to produce Ho Lee and they have indicated
 2 that they are not going to produce Mr. Bang. We believe
 3 -- they are suggesting that Mr. Ho Lee no longer works
 4 for LPL but works for the parent company, LGE.

5 I think we have discussed an agreement,
 6 whereby, if Mr. Ho Lee is not going to testify at trial
 7 and his declaration is not going to be used at trial,
 8 then we don't have a problem taking his deposition. But
 9 Mr. Bang is a key witness, as was illustrated in the
 10 deposition testimony today, and his deposition has to be
 11 taken, and there is no excuse for not producing him.

12 MR. CHRISTENSON: Your Honor, with
 13 respect to Mr. Ho Lee, as Mr. Merideth stated, ViewSonic,
 14 who noticed his deposition, had proposed not proceeding
 15 with Mr. Ho Lee's deposition if Mr. Ho Lee was not going
 16 to be testifying as part of LPL's case at trial, and I
 17 have sent a letter confirming that we do not intend to
 18 call Mr. Ho Lee as part of our case at trial, and,
 19 therefore, as I understand it, that issue is moot.

20 With respect to Mr. Bang, this is a --
 21 SPECIAL MASTER POPPITI: Let's pause

22 right there for a moment. Is that the case?

23 MR. MILLER: Your Honor, we did make
 24 that proposal, and I got Mr. Christenson's letter. There

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1 was some issue in there, I don't really know what that

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2 means, in the sense he says that we would not be seeking
 3 to take advantage of his absence. I don't know what that
 4 means.

5 Obviously, if there is documents that he
 6 has authored, we would to expect to be able to use them
 7 if we can use them through other witnesses. If they are
 8 not going to call him there to testify and they are not
 9 going to try to sneak his testimony in through some other
 10 fashion, then we are not going to try to take his
 11 deposition. We are willing to make that agreement to cut
 12 to the chase here, but I don't know what Mr. Christenson
 13 had in mind about this sort of vague comment about, you
 14 know, "take advantage his absence."

15 MR. CHRISTENSON: Your Honor, I am happy
 16 to clarify that. There is no intent to sneak anybody's
 17 testimony into the trial. We have no intention, as I
 18 have affirmatively stated, of calling him as a witness.
 19 What I alluded to in my letter was I was assuming that
 20 Mr. Miller is not intending to make some argument to the
 21 jury that we, that, in rebuttal, we should have called
 22 Mr. Ho Lee as a witness and failed to do so. Obviously,
 23 if they raise that sort of a question, that's a different
 24 situation. But we have no intent of using him in our

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1 affirmative case at trial whatsoever.

2 MR. MILLER: We absolutely will raise
 3 the issue of his absence. He was involved directly in
 4 many of the key issues in this case. We just can't
 5 compel him to come here and have his deposition taken.

6 SPECIAL MASTER POPPITI: Let's slow down
 7 for a moment. I have the authority to deal with pretrial
 8 matters, and with respect to those pretrial matters, if I
 9 understand what you have just said, if Mr. Ho Lee is not
 10 going to be called as a witness, there is an agreement
 11 not to depose him. That's what I think I heard.

12 MR. CHRISTENSON: That's correct.

13 SPECIAL MASTER POPPITI: What you all do
 14 with that information -- or what you all do with respect
 15 to Mr. Ho Lee's absence at trial is something that, quite
 16 frankly, I don't have any control over. I would have
 17 some thoughts on it, but they would be just Vincent
 18 Poppiti's thoughts, and I don't know that that holds any
 19 weight for my -- for Judge Farnan with respect to trial
 20 issues.

21 So, I think what I have heard is there
 22 is no need for me to consider dealing with the scheduling
 23 of Mr. Ho Lee's deposition.

24 MR. MILLER: I believe that's correct

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1 based on that.

2 MR. CHRISTENSON: May I respond with
 3 respect to Mr. Bang's deposition?

4 SPECIAL MASTER POPPITI: Let's do that.
 5 And I do expect, counsel, that we are, by virtue of
 6 talking about Mr. Ho Lee and Mr. Bang, we are dealing
 7 with item No. 4 in the February 26th status report; is
 8 that correct?

9 MR. CHRISTENSON: Your Honor, I don't
 10 have that in front of me.

11 SPECIAL MASTER POPPITI: That's where
 12 there is extended discussion about both gentlemen.

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13 MR. CHRISTENSON: That's probably
14 correct, Your Honor. This is an issue that only recently
15 has come to light.

19 MR. MILLER: I don't have it in front of
20 me either, but I suspect that's right as well.
21 SPECIAL MASTER PORRITT: Yes, okay.

21 SPECIAL MASTER POPPITT: Yes. Okay. I'll be mindful of the

22 Then let's talk about Mr. Bang. And be mindful of the
23 fact that I said to you before, I perused the letter but
24 I didn't study it, so I may have to look down a couple
25

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1 times as you are talking.

3 MR. CHRISTENSEN: As Your Honor knows

times as you are talking.

2 MR. CHRISTENSON: As Your Honor knows,
3 we have been negotiating on a deposition schedule for
4 several months in this case, and throughout that process,
5 we were never informed of any intention to depose
6 Mr. Bang. Mr. Bang is referenced very briefly in at
7 least one of the documents that LPL produced, I believe
8 in April of 2006, and Mr. Bang was identified by
9 ViewSonic in initial disclosures in September 2006 or
10 earlier; however, as I mentioned, whenever we have
11 discussed depositions, never was his name mentioned as a
12 witness for which a deposition was sought. And we have
13 seen a -- the deposition notice was issued on February 16
14 for a March 14 deposition. Right now, we already have
15 two other depositions scheduled of the defendants'
16 witnesses for that same day.

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between counsel before it's ripe for you to consider.

1 between counsel before it's ripe for you to consider.
2 I have asked, in my recent letter, what,
3 specifically, do they think they need to ask Mr. Bang
4 about because it seems to me that any issues for which he
5 might have some knowledge, and I think his knowledge
6 would be limited, are issues that are going to be
7 addressed by the existing witnesses this week and/or next
8 week.

8 week.
9 So, I don't want to be in a situation
10 where we bring a witness here from Korea that really is
11 not necessary and is -- and if there is an expense,
12 obviously, and an effort to do it.

12 obviously, and an effort to do that.
13 SPECIAL MASTER POPPITI: Can you have
14 those discussions that you propose between now and Friday
15 so that if the discussions aren't fruitful in forging an
16 agreement, that I can deal with that specific issue on
17 Friday?

21 MR. MILLER: I will be taking Mr. Kim's
22 deposition tomorrow, probably, but we can -- I am sure we
23 can work it in somehow. The only problem I have, I

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24 guess, is that -- I don't mind putting it until Friday,
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1 but we are here from California this week and next, and
 2 we'd like to do it efficiently while everybody is in
 3 Washington taking these depositions.

4 If we put it to Friday, I don't want to
 5 be in a situation where now we argument that we need
 6 another couple weeks to get it scheduled and we have to
 7 make trips back and forth, as opposed to still looking at
 8 the 12th as a possible date and the 14th as a possible
 9 date, and if that doesn't work, we will, with your help,
 10 we will pick another date if that's appropriate. But I
 11 don't want to have to slide it to the end of March and
 12 have to make another trip simply because the intervening
 13 time has past.

14 SPECIAL MASTER POPPITI: I understand
 15 that. My comment would be this: I would suggest that if
 16 you think you are wanting to deal with that now and you
 17 want to be providing me with the information fresh as we
 18 are talking, that's fine. If it's important for you to
 19 have some discussion with respect to that and you think
 20 you can have that discussion and hopefully resolve it,
 21 and you think that you need ten minutes with me on the
 22 phone before Friday, then I will make myself available.
 23 I understand the need to resolve the "Bang" issue, if you
 24 will, sooner than later.

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1 MR. MILLER: Thank you, Your Honor. I
 2 am happy to talk to Mr. Christenson tomorrow about it and
 3 see if we can work something out. I am always preferring
 4 to work it out rather than to consume Your Honor's time
 5 and hopefully we can, and, if not, we will raise it
 6 either tomorrow for ten minutes for Friday.

7 SPECIAL MASTER POPPITI: Tomorrow, you
 8 have got the office number. Let me suggest this: If I
 9 don't pick up right away, our phone system here,
 10 unfortunately, doesn't tell you that I am on a phone, so
 11 if I don't answer it right away, no one else will pick
 12 up, it will go to a voice mail. Feel free to use the
 13 cell phone number that I have given you, and between the
 14 two, I should be able to get back to you within 15
 15 minutes after your call.

16 MR. MILLER: Thank you, Your Honor.

17 SPECIAL MASTER POPPITI: And, obviously,
 18 counsel, if that occurs and you are in the throws of a
 19 deposition, it will be helpful for you all to use the
 20 court reporter that is working the deposition to deal
 21 with the telecon. Okay?

22 MR. MILLER: Yes, that makes sense.

23 MR. CHRISTENSON: Thank you, Your Honor.

24 SPECIAL MASTER POPPITI: Thank you.

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1 Next, please.

2 MR. MILLER: I think the next issue,
 3 Your Honor, is the question of the time for Mr. Kim's
 4 deposition, who is both an inventor and subject to the 21
 5 hours, plus the designee under all four of the deposition
 6 notices. That's a notice -- that's an issue independent
 7 of the issue I think that was reported to Your Honor
 8 today regarding his level of preparation.

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9
10 makes the most sense to do it, or however you would like.
11 SPECIAL MASTER POPPITI: Let's do them
12 one at a time.

13 MR. MILLER: I think under Your Honor's
14 order with regard to the depositions and the timing, the
15 clarification of the original scheduling order, Mr. Kim
16 has an obligation to appear for 21 hours as an inventor,
17 as an individual, and as he was the designee under -- as
18 a witness under all four of the deposition notices, would
19 have an obligation to appear as a witness under each of
20 the deposition notices for the, because the translator is
21 required, ten-and-a-half hours for each notice.

22 I don't think -- I was hoping,
23 ultimately, we wouldn't need all that time. Having seen
24 what I have seen over the last couple days, I am less

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1 optimistic, but, you know, I think that -- I think LPL
2 has a different view in terms of what his obligations are
3 in the abstract under the notices.

4 SPECIAL MASTER POPPITI: Before I hear a
5 view, let me explain once again what I meant by the
6 order. It's precisely as you have identified it. So, if
7 there needs to be some fine tuning of that, you need to
8 tell me. That's the way I intended the order to read.
9 That's what I mean the order to say.

10 MR. MILLER: That's what I understood,
11 but I think we needed that last clarification from Your
12 Honor.

13 SPECIAL MASTER POPPITI: Does it need
14 anymore clarification? Please.

15 MR. BONO: Gaspare Bone.
16 SPECIAL MASTER POPPITI: I haven't heard
17 your voice in so long, Mr. Bono.

18 MR. BONO: Yes. I much prefer to talk
19 about French law than patent issues.

20 SPECIAL MASTER POPPITI: Good. Thank
21 you. You can do it in French and I won't pick up a word.

22 MR. BONO: As I understand Your Honor's
23 order, you have decided that there should be 21 hours for
24 the individual inventor depositions.

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1 SPECIAL MASTER POPPITI: That's correct.
2 MR. BONO: And then I am a little bit
3 confused, I must say, with respect to the 30(b)(6) notice
4 and the import of Your Honor's ruling as to the time
5 allotted for the 30(b)(6) component and how that plays,
6 out as a practical matter, with respect to this
7 particular case.

8 And my -- and my concern is that we have
9 designated, and just so Your Honor -- we have designated
10 two individuals to be our 30(b)(6) witnesses for all of
11 the 30(b)(6) topics, Mr. Kim, who has been deposed now
12 for the last three days, and Mr. J.F. Kim, who will be
13 deposed next Thursday and Friday on certain topics of the
14 30(b)(6) designation. Fundamentally, we have designated
15 John Kim, whose deposition has been taken these three
16 days, on the technical issues in the deposition notice,
17 and Mr. J.F. Kim will testify on the non-technical
18 business and sales issues topics in the notice.

19 At the beginning of the deposition this

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20 week, I proposed, and we reached an agreement with the
 21 defendants, that it made more sense, rather than
 22 segregating Mr. John Kim's deposition into two separate
 23 parts, individual and 30(b)(6), that since there were a
 24 number of technical topics that overlapped, because they

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1 assuredly will ask these questions as an inventor and
 2 assuredly ask him these questions as a 30(b)(6), that I
 3 proposed that we take the deposition from the beginning
 4 in a dual role and they could ask questions of him that
 5 would cover both circumstances.

6 And then at the end of these two weeks
 7 of depositions, the defendants will designate those
 8 portions of Mr. John Kim's deposition that they believe
 9 are covered by the deposition -- 30(b)(6) deposition
 10 topic, we will have an opportunity to respond, and either
 11 agree or disagree.

12 We would then meet and confer to try to
 13 narrow the issue, and then if we are unable to reach an
 14 issue as to certain portions of the deposition, that we
 15 would bring that -- those matters to Your Honor's
 16 attention to make a decision on whether Your Honor felt
 17 that this was covered by a 30(b)(6) topic or was
 18 individual testimony.

19 SPECIAL MASTER POPPITI: Okay.

20 MR. BONO: That agreement was agreed to
 21 by the parties at the beginning of this deposition.

22 SPECIAL MASTER POPPITI: May I ask a
 23 question as you are explaining?

24 MR. BONO: Yes, sir.

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1 SPECIAL MASTER POPPITI: Did any part of
 2 the agreement or any conversation with respect to the
 3 agreement impact on the time as described in the
 4 scheduling order and as I have just re-described it?

5 MR. BONO: Not -- we left that issue for
 6 discussion for another day, Your Honor. I was trying to
 7 just reach sort of this kind of efficient agreement and
 8 then deal with the time issues at a later date.

9 SPECIAL MASTER POPPITI: Okay.

10 MR. MILLER: We actually did discuss it,
 11 and what we agreed to was that this amalgamation, if you
 12 will, of the deposition, to the extent it would lead to
 13 efficiencies, would benefit everybody, but it had no
 14 impact whatsoever on the timing that was permitted under
 15 the deposition notices that were -- that you had had
 16 before you.

17 SPECIAL MASTER POPPITI: Okay. Thank
 18 you. I just wanted to know if there was any discussion
 19 about it.

20 MR. BONO: Your Honor, now to come to
 21 the timing issue with respect to the 30(b)(6) deposition
 22 notice, given the -- what has happened during the last
 23 three days, Your Honor, it is quite apparent that the
 24 defendants are going to, as good lawyers, take up

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1 whatever amount of time they have, that Your Honor gives
 2 them, with respect to Mr. Kim regardless of whether, you
 3 know, it is necessary or sufficient for their inquiry.

4 And they have gone -- they have spent

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5 three days and they have gone into questions dealing with
 6 such minutia that it boggles the mind, and they are
 7 simply, it is apparent, they are simply taking up time in
 8 order to fill this enormous amount of time that Your
 9 Honor has extended to them.

10 For example, they went so far as to take
 11 time to ask Mr. Kim how far his desk was from the company
 12 co-inventor's desk, Mr. "Chow", to elicit a response that
 13 it was about five meters apart. And that's just one
 14 example of the level of minutia that they are going into.

15 With all due respect, Your Honor, it is
 16 apparent that having five days during this week with
 17 Mr. Kim was more and is more than sufficient time for the
 18 defendants to go into any topics, legitimate topics that
 19 they need to inquire of Mr. Kim as an inventor and
 20 legitimate inquiries on the deposition topics that he has
 21 been identified for.

22 And, so, I would propose the following
 23 -- plus, the defendants are entitled to get information,
 24 and we don't dispute that, but we provide information to

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1 the defendants through several sources. Sometimes it's
 2 best to get it from a deposition witness, including a
 3 30(b)(6) notice; sometimes it's more efficient to give
 4 information to the defendants by way of interrogatory
 5 answers. We have answered enormous amounts of
 6 interrogatories and have provided that to them. And they
 7 are -- they have the information in several of these
 8 categories.

9 I would respectfully submit, Your Honor,
 10 that after we conclude these five days with Mr. Kim, that
 11 Your Honor -- after we conclude, say, even next week's
 12 depositions, that the defendants have to provide good
 13 cause to Your Honor to take further deposition testimony
 14 of these 30(b)(6) witnesses and explain to Your Honor
 15 what information they don't have from the plaintiff,
 16 either by way of the deposition testimony or by way of
 17 interrogatory answers, before we go beyond these ten days
 18 of depositions, which, quite frankly, I respectfully is
 19 submit is more than sufficient time for the defendants to
 20 get the information that they are entitled to on the
 21 deposition topic.

22 SPECIAL MASTER POPPITI: Let me ask you
 23 this question, and I am not looking for a bottom line
 24 answer, but I think what you are saying to me is: Given

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1 the framework of 30(b)(6) time that I read into the
 2 order, there being no definition before I read it into
 3 the order and put it into the order and will propose that
 4 Judge Farnan sign that document, and I realize you are in
 5 the throws of depositions now, I think what I hear you
 6 saying is that, the flip side, it seems to me, of
 7 stonewalling a deposition, if you will, which I expect
 8 all of you would agree with me is ultimately
 9 sanctionable, the flip side of that may be, and I am not
 10 writing on any slate, I don't have a slate that I have
 11 written on with respect to this, but the flip side of it
 12 may be that the time that is permitted is literally being
 13 wasted and the purpose of the waste is simply to waste
 14 time.

15 I have to expect -- I don't know the

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16 answer to this -- that the flip side of stonewalling is
17 wasting resources and wasting time. And if that's the
18 case, then it seems to me what you may be saying, and I
19 heard what your request was with respect to an
20 application, but the flip side of stonewalling may be
21 that you will make an appropriate application at an
22 appropriate time to argue just that, that the -- that
23 everyone's time was being wasted for no good purpose, and
24 that, as an appropriate sanction, attorneys' time,

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1 expenses, and other things should be borne by a party
2 that wastes deposition time.

3 I think that's what you may be -- you
4 haven't said it that way, because you are saying to me,
5 you know, we may want you to get involved in this before
6 time gets wasted, and you may want me, then, to make some
7 judgment that no additional time is needed, and I am not
8 -- I am not convinced that that's the best circumstance
9 for whether it's a Special Master or a Magistrate Judge
10 or for the Court to be in to say, I can make a judgment
11 that no more time is necessary as opposed to saying --
12 and I realize it's at the end of the game, if you will --
13 too much time was taken, too much time has been wasted.

14 Do you want to speak to that just for a
15 moment?

16 MR. BONO: Well, Your Honor, quite
17 frankly, I am really -- I am really only trying to
18 protect the time of my clients in having to come from
19 Korea and spend not only these two weeks in the United
20 States, but, as I understand defendants' position is,
21 with respect to Your Honor's order, is that they are now
22 going to have to come back for a significant amount of
23 more time to have their depositions taken.

24 And I believe that over the course of

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1 the next -- of the ten days that we have for this
2 deposition taking, that there is more than sufficient
3 time, with the witnesses we have provided, to make the
4 proper inquiries, for the defendants to get the
5 information that they are entitled to, to get in
6 discovery in this case.

7 And that if they want more time after
8 this, that they should bear the burden of coming before
9 Your Honor and saying, we need more deposition time
10 because we don't have information on A, B, and C. And if
11 they can make that showing, perhaps they should be
12 entitled to some additional time. But if they already
13 have the information that is being provided to them,
14 either by way of deposition testimony or by way of
15 interrogatory answers, it seems to me that we are being
16 unfairly burdened.

17 And I am not really interested, Your
18 Honor, in setting up a situation where one side is
19 seeking sanctions against another.

20 SPECIAL MASTER POPPITI: I am not
21 inviting that either. I understand.

22 MR. BONO: And that's not my intent,
23 purpose, or request.

24 My sole proposal is: Because of the

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1 flip side that Your Honor identified, which is certainly
2 the case, whether it's purposeful or inadvertent, time
3 will fill up -- to fill the space.

4 SPECIAL MASTER POPPITI: Mr. Bono, let
5 me ask you a question. Let's not talk about 30(b)(6) for
6 a moment. Let's just talk about a fact witness. And let
7 me expect that the fact witness is a non-English speaking
8 person and it is not an inventor, so you get, by virtue
9 of the order, 10.5 hours; that's clear, is it not?

10 MR. BONO: Yes, Your Honor.

11 SPECIAL MASTER POPPITI: Now, let me
12 also expect that during the course of that 10.5 hours,
13 everything that you can conceivably get from that witness
14 is accomplished in the first hour, and, yet, the
15 deposition continues grueling to 10.5 hours, what
16 authority do I have to say, at the end of an hour and a
17 half, Enough is enough; you have got everything you need;
18 you don't have to do it in English and French and German,
19 etcetera; you have got all the detail you need, and we
20 are going to make an application to the Court to cut it
21 off at an hour and a half, you are not entitled to the
22 10.5?

23 Now, I realize it's a different set of
24 facts, but is it not the same thing? I read the

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1 application. I made my judgment with respect to how much
2 time is permitted as I read the rule, as I read the
3 commentary to the rule. I defined that for everyone.

4 what I am hearing from you is that all
5 of the time that I have said is permitted is not needed.
6 What authority do I have to deal with that at the front
7 end of this? And I guess the best example I can think of
8 is a pure fact witness for 10.5 hours where everyone
9 around the table knows that, at the end of an hour and a
10 half, there couldn't possibly be anymore information and
11 you are literally down talking about how many inches
12 somebody is sitting from someone else, and it has little
13 if anything to do with the case, so there is an objection
14 of -- there is a relevancy objection, there is a record
15 made, and the witness answers the question.

16 Then the next question is: How far is
17 the phone from your chair? How far is the screen from
18 your chair? Stuff that is literally wasting time. What
19 authority do I have to get involved in that at the front
20 end other than a desire to want you all to operate
21 efficiently?

22 MR. BONO: Your Honor, I believe, as the
23 Special Master, you would have the authority to get
24 involved. But I must say, I don't, with all due respect,

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1 I don't see the issue that I am addressing to be a
2 situation involving where we have, as you said, an
3 individual fact witness --

4 SPECIAL MASTER POPPITI: I understand
5 that. I don't mean -- I don't mean to diminish the
6 importance of the witnesses that are in the chair. I
7 don't mean to diminish that at all. I understand what it
8 means to you and to your client to literally disrupt the
9 business that they should be about, and that is the
10 business that they are in. I understand that. I was
11 using it as, just simply as an example.

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12 Let me hear from -- I understand your
 13 position, Mr. Bono. Let me hear from the other side,
 14 please.

15 MR. MERIDETH: Let me address what has
 16 happened so far in this deposition because I think it's
 17 relevant directly to this issue.

18 First of all, we have had three days of
 19 deposition but we have only had 18.32 hours of testimony,
 20 and the reason that that has occurred is because counsel
 21 for LPL and the witness has been persistently late,
 22 taking persistently long lunch hours, except for today,
 23 and the witness tires and wants to leave at 6:00.

24 So, we have been going at the rate of

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1 six hours and ten minutes a day. Now, at that rate, it's
 2 going to be a long time before we are finished. That's
 3 problem No. 1.

4 Problem No. 2, and this is far more
 5 important and it raises the second issue, but I feel we
 6 have to address it, we are having a problem with this
 7 witness. For one thing, whenever he finds himself in a
 8 tight spot, he has a language problem. He quibbles over
 9 translations that were certified by LPL as being accurate
 10 translation.

11 SPECIAL MASTER POPPITI: I just have to
 12 ask a point of clarification: The Mr. Kim that we are
 13 talking about, have I been aware of his deposition
 14 testimony in the jurisdictional phase?

15 MR. MERIDETH: I don't know.

16 SPECIAL MASTER POPPITI: Because I can't
 17 remember that gentleman's first or second name, but go
 18 ahead, please.

19 MR. MERIDETH: Now, I'd like to read you
 20 an exchange that will give you an idea of wasting time.
 21 This is Mr. Kim, who is an inventor, he is the head of
 22 their patent office function, and he is a 30(b)(6)
 23 witness on the subject of the patent-in-suit.

24 "QUESTION: Would the difference by

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1 model of the light guides to which you just made
 2 reference be an important difference in your invention?

3 "ANSWER: That, I am not sure.

4 "QUESTION: Well, how could you become
 5 sure?

6 "ANSWER: Well, even that, I am not
 7 sure.

8 "QUESTION: Well, did you describe, in
 9 your patent, anywhere, how differences in light guides
 10 would be important respecting your invention?

11 "ANSWER: I don't really know, you know.
 12 Search me.

13 "QUESTION: Well, I am sorry, but you
 14 are the inventor. I would expect you might have some
 15 idea as to whether the difference in light guides might
 16 be material to your invention.

17 Is there anybody else that you know of
 18 that might know that information about your patent?

19 "ANSWER: Please bear with me. I was a
 20 little bit out of wits just a moment ago.

21 In any event, I already told you that
 22 that was a long time ago that I made my invention, and I

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23 came up with a patent as a result, you know. Needless to
 24 say, I don't have very clear recollections of the past
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1 events. So in order to, you know, read through the
 2 patent and come to grips with the overall, you know,
 3 specifics of the patent, in order to be able to effect --
 4 more effectively answer your question.

5 "QUESTION: Well, did you understand
 6 that as a 30(b)(6) witness, that at least you had an
 7 obligation to read the patents-in-suit?"

8 "ANSWER: I did understand that I had an
 9 obligation to read the applicable patent, but I didn't
 10 realize that that goes to the extent of interpreting or
 11 construing the contents of the patent."

12 And it goes on. And for question after
 13 question after question, he says he can't answer the
 14 question because he hasn't read the patents.

15 Let me give you another example.

16 "QUESTION: Are you aware of any
 17 functional difference between any of the components of
 18 Figure 6 and Figure 4C other than the mounting holes on
 19 the first frame?"

20 "ANSWER: I would give you the same
 21 answer that I had been giving you to these types of
 22 questions. In order to figure out the functions, it is
 23 necessary for me to spend a long time to thoroughly read
 24 through these two patents, and I can answer your question

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1 effectively only after I have found out about the
 2 functions of the associated elements, and, as of now, I
 3 am not prepared in that manner that I was describing, so
 4 I would not be able to answer your question effectively."

5 That goes on and on and on with respect
 6 to every question relating to Figures 4 -- I am sorry,
 7 Figures 6 and 4C, to which we sent you a copy, as to
 8 every single element, he says he doesn't know.

9 Second --

10 SPECIAL MASTER POPPITI: And I guess
 11 what you are describing to me is, again, the flip side,
 12 maybe that's the third side of a coin that's standing on
 13 its end a bit here, the third side of the coin is you are
 14 suggesting, by reading part of a record, that you have
 15 got a witness in the chair wearing his 30(b)(6) hat, and,
 16 boy, I guess it really could get confusing understanding
 17 the agreement you all forged, he is wearing his 30(b)(6)
 18 hat and he is telling you, Yeah, I was the person that
 19 was designated 30(b)(6); I am not prepared to do this.
 20 And you know the question I am going to ask next: How
 21 much more time do you need even if you use up all the
 22 time that you have been allotted if this continues?

23 I am not making any judgment here.

24 MR. MERIDETH: The problem is that he is

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1 simply not prepared in asking him the questions over and
 2 over and over again.

3 SPECIAL MASTER POPPITI: He is not
 4 giving you anymore information?

5 MR. MERIDETH: No. Because every single
 6 question he says he doesn't know.

7 MR. BONO: May I respond?

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8 SPECIAL MASTER POPPITI: Just a moment,

9 Mr. Bono.

10 MR. BONO: Thank you. I just want to
11 make sure I have an opportunity to respond.

12 SPECIAL MASTER POPPITI: Absolutely.

13 MR. MERIDETH: We have been completely
14 frustrated with respect to any questions, and, bear in
15 mind, that's this witness' own patent, and he hasn't even
16 read it adequately to answer questions concerning it.17 The second problem that we have, and
18 it's a very crucial issue in this case, and it relates to
19 the standing of LPL or LG to prosecute this case. It was
20 an issue that was also addressed in the California
21 litigation. And it has to do with agreement called the
22 DEC agreement.

23 SPECIAL MASTER POPPITI: Yes.

24 MR. MERIDETH: And the issue is whether

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1 or not the patents-in-suit were developed during the
2 course of the performance of the DEC agreement or are
3 improvements on the DEC patent because, if they are, they
4 are governed by the development manufacturing agreement
5 between LGE and DEC. And that was exactly what the issue
6 was in the California case, and in that case, the Court
7 found there was no standing.8 We have asked Mr. Kim about the DMA, and
9 he has been instructed not to answer.10 SPECIAL MASTER POPPITI: Which hat is he
11 wearing when you ask him that question?12 MR. MERIDETH: 30(b)(6). He has not
13 been instructed not to answer as an individual, but he
14 claims he has no knowledge. As a 30(b)(6) witness, and
15 it is a specific topic that has been designated for his
16 testimony, his counsel refuses to allow him to answer on
17 the grounds that an objection was made to the 30(b)(6)
18 deposition and that they don't have to get a protective
19 order, we have an obligation to come in and make a motion
20 to compel his testimony. And that's just preposterous,
21 and we spent a tremendous amount of time with that issue
22 as well.

23 An instruction not to answer --

24 SPECIAL MASTER POPPITI: Let me ask

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1 this: I know local counsel is on the phone and I expect
2 you have had conversation with local counsel as to what
3 is expected in this district with respect to deposition
4 practice and what is expected in this district with
5 respect to objections and instructions not to answer.6 Those of us in Delaware know that there
7 is virtually a template that was prepared a number of
8 years ago -- I would expect that local counsel is aware
9 of it and have done what I know we certainly have done in
10 this firm, and that is updated it -- and I don't know
11 whether I want local counsel to weigh in yet on the
12 issue -- but it seems to me that if there is an issue
13 with respect to a 30(b)(6) witness, and if the counsel
14 for that witness concludes that the questioning is beyond
15 the issues that are identified for that witness to be
16 testifying to, then it is the responsibility of the
17 attorney that is representing that witness to state that
18 for the record and ask the Court for a protective order.

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19 Now, if I don't have that right, in
 20 terms of what is expected here in the district, then I
 21 invite my friends that are local counsel to tell me
 22 that's not what's expected here.

23 MR. COTTRELL: Your Honor, I think two
 24 thoughts. Your Honor was, of course, referring to Judge

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1 McKelvie's Turks Becker decision where he did lay out
 2 that template and I am sure it has been updated. I am
 3 happy to send that case to everyone that would like to
 4 read it. I know Ms. Gaza and I have spoken with counsel
 5 about how depositions go in Delaware.

6 And your second point is, at least in my
 7 understanding, also correct, that during a deposition,
 8 the only instructions not to answer a question are on
 9 questions of privilege, and that if the defending
 10 attorney feels the deposition is going beyond a topic, it
 11 is their obligation to contact the Court for a protective
 12 order.

13 SPECIAL MASTER POPPITI: That's my
 14 understanding. I think it would be helpful for you, and
 15 I appreciate the courtesy of your doing that. I, quite
 16 frankly, before you all entered into depositions, gave it
 17 some very serious thought as to whether something like
 18 that should issue from my desk, and I thought that that
 19 was completely inappropriate.

20 I think it would be helpful for you to
 21 circulate that, Mr. Cottrell, and I appreciate the offer.

22 MR. COTTRELL: I will do so, Your Honor.

23 SPECIAL MASTER POPPITI: That is my
 24 understanding of how we operate in this district.

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1 Judge McKelvie did set down the template a number of
 2 years ago, and I am not aware of any judge of this
 3 district that has advised, instructed, or ordered that it
 4 be done otherwise.

5 I don't know whether that's helpful for
 6 purposes of continuing our conversation in this respect.

7 MR. MERIDETH: The problem here is,
 8 obviously, that developed today, and I have only given
 9 you a very small example of the failure of this witness
 10 to be adequately prepared on even the most basic issues,
 11 and it's not a waste of time. We have to ask these
 12 questions because we have to make a record. He
 13 persistently refuses to answer them and evades them by
 14 saying he doesn't know or he doesn't understand or
 15 whatever.

16 SPECIAL MASTER POPPITI: Mr. Merideth, I
 17 guess I have a question. I expect that, at some point,
 18 from your perspective, you will get to a point where you
 19 have concluded that, with all the questions dealing with
 20 the minutia that you say is important, you are going to
 21 get to a point where you are going to say, This witness
 22 is not properly prepared, and I expect that you would be
 23 saying to me, The application is, this 30(b)(6) is in
 24 recess; we need additional time and we need a different

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1 designee.

2 I mean, isn't that the ultimate relief?

3 MR. MERIDETH: Yes, sir. There is one

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4 other alternative, and, that is, that if this is the
 5 correct witness, that he prepare himself.

6 The problem is he says he didn't take
 7 any notes, he went around and gathered documents from
 8 various people but can't remember what documents there
 9 were, he spoke to half a dozen people and he can't
 10 remember what they told him, and he cannot speak to any
 11 question on any definitive basis.

12 We have gone through the ,139 patent and
 13 the two patents-in-suit, and he just can't answer any
 14 questions about them.

15 SPECIAL MASTER POPPITI: Well, he is
 16 either prepared or he isn't. And if --
 17

18 MR. BONO: Your Honor, may I respond at
 19

20 SPECIAL MASTER POPPITI: I am not making
 21 any judgments, Mr. Bono, but I do want you to respond. A
 22 witness is either prepared or he isn't.

23 MR. MERIDETH: So there are two
 24 alternatives: He prepare himself, or, alternatively,
 someone else be designated that is prepared. But at this

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1 point, asking this fellow further questions is a complete
 2 waste of time.

3 SPECIAL MASTER POPPITI: So what am I
 4 being asked to do?

5 MR. MERIDETH: Well, Mr. Bono,
 6 obviously, has a different opinion, but I think that this
 7 witness has to be instructed to tell us how much time
 8 it's going to take him to prepare to answer questions
 9 that have been designated for him as a 30(b)(6) witness.

10 SPECIAL MASTER POPPITI: You are
 11 entitled to ask him that question, aren't you?

12 MR. MERIDETH: Yes, and to get him to
 13 take that time, at his expense, to do that. I mean, if
 14 it takes him a week, it takes him a week. But we can't
 15 -- I mean, it's just a waste of everybody's time and
 16 resources to listen to him tell us that he hasn't even --
 17 he hasn't read his own patent carefully enough to answer
 18 questions about the figures.

19 MR. BONO: Your Honor, I must step in
 20 and correct these misstatements by Mr. Merideth, lest
 21 Your Honor get the wrong impression of what actually has
 22 taken place in this deposition and with respect to
 23 Mr. Kim's dutiful and thorough preparation for this
 24 deposition.

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1 May I respond?

2 SPECIAL MASTER POPPITI: You may, and I
 3 want to assure you I have made no judgment. I am not
 4 sure I have a record from which to make a judgment. In
 5 any event, I am just giving you what I expect I hope is
 6 some helpful guidance as to how I would approach the
 7 issue that you both want to tee up from your respective
 8 positions with an appropriate record before me.

9 And I think the most efficient way to do
 10 it is not with a lot of -- with a lot of paper with an
 11 expectation that, at some point, I am going to get to
 12 write proposed findings of fact and conclusions of law.
 13 You need something pronto. And the only way to do that
 14 is to serve up your positions with the respective

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15 designations from the transcript, or the entire
16 transcripts, we reconvene, yet again, in between our
17 status conferences, and, I mean, I won't hesitate to give
18 you my best judgment with respect to what is transpiring.
19 He is either prepared or he isn't
20 prepared.

21 p. 69, 69a. MR. BONO: Your Honor, let me assure you
22 that Mr. Kim was prepared and is prepared and spent a
23 more than sufficient time to prepare as a 30(b)(6)
24 witness.

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1 Now, according to Mr. Merideth, as I
2 understand it, I think his position is that he has barely
3 gone into any of the topics on the 30(b)(6) notice at
4 this point. So, for him to make these accusations is not
5 only unsubstantiated but unfair.

5 only unsubstantiated but different.
6 What we have here is a situation where
7 Mr. Kim was prepared as our 30(b)(6) notice on these
8 topics. He testified that, as a 30(b)(6) designee, he
9 went out and got the information at the company necessary
10 to present the company's position on these various
11 topics. He testified today that he spoke with the
12 following -- he identified at least five individuals in
13 his department that he spoke with and gathered
14 information from.

He testified that he spoke with and gathered information from other departments, including the sales department, the product planning department, the design group, the TV R and D group, the IP group, and a small size R and D group to be able to testify with respect to the information at LG Phillips in response to these topics.

22 these topics. He also testified that he gathered and
23 reviewed a whole host of categories of documents to be
24 able to testify on these deposition topics. He testified

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1 that he reviewed sales documents, sales data, sales
2 summaries, specifications, model related specification,
3 bill of materials, module specifications, information on
4 modules with holes that are on the rear side of the
5 modules, the patents, the complaint in the case, LPL's
6 interrogatory answers, and other documents. And those
7 are just examples of the work he did to prepare for this
8 deposition.

14 For example, with respect to the figures
15 on the two patents that he complains about in the letter
16 that he just sent to Your Honor, he says Mr. Kim wasn't
17 able to explain the differences to him.

18 The truth of the matter is, in the
19 deposition, he asked Mr. Kim, by just looking at the
20 figures themselves, without looking at the
21 specifications, Can you explain what the layers are in
22 the two figures? And he said, From just looking at the
23 figures, you could not do that.

24 So then Mr. Merideth showed him the

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1 specifications, and he asked him, Looking at the
 2 specification, what are those figures? What are those
 3 elements in each of the figures? He identified and
 4 confirmed what each of the elements are.

5 Then Mr. Merideth asked him, Can you
 6 tell me, for example, both patents identify a reflector
 7 in the two figures, and he asked Mr. Kim, Can you tell me
 8 whether the reflector that's depicted in these patents
 9 has the identical structure as depicted in these patents?
 10 And Mr. Kim, quite properly, said, In order for me to
 11 answer that question, I have to review the patent.

12 Mr. Merideth never asked him, Well,
 13 review the patent now and answer my question. He
 14 neglected to ask him the question solely so he could come
 15 before Your Honor and present this bogus position that
 16 Mr. Kim was not prepared to testify.

17 Mr. Kim testified that he, in
 18 preparation for his deposition, reviewed these patents,
 19 reviewed both the ,641 patent, the ,718 patent, and the
 20 ,139 patent about which he was asked about.

21 However --

22 SPECIAL MASTER POPPITI: Mr. Bono, I
 23 don't mean to cut you off, but I just did. Let's do
 24 this, as much as I don't think I want this, I mean, I

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1 appreciate what -- I appreciate that you are summarizing
 2 your view of the transcripts.

3 It seems to me, counsel, if I am to be
 4 making a judgment here, that I have got to have the
 5 transcripts and I have got to take whatever time it takes
 6 to read the work that you have been doing against the
 7 backdrop of a one- or two-page document, which says, from
 8 one point of view, he is not properly prepared, here are
 9 the references; from the other point of view, he was
 10 properly prepared, here are the references, and I will
 11 make the judgment.

12 I am not meaning to cut you off in
 13 arguing for your position, but I am just wanting to do
 14 this in the most -- I can't sit here and make a judgment
 15 based on who you gentlemen have said because you clearly
 16 disagree.

17 So tell me how that can be served up so
 18 I can deal with it literally by mid afternoon tomorrow?

19 MR. MERIDETH: We have electronic copies
 20 of the rough transcripts. They are not the official
 21 transcripts.

22 SPECIAL MASTER POPPITI: I understand.

23 MR. MERIDETH: We can forward you the
 24 three days of testimony. I think, actually, today, just

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1 one day, is the most exemplary, and I think that's
 2 sufficient, if you just looked at today, you would have
 3 the whole --

4 SPECIAL MASTER POPPITI: I understand
 5 what your perspective is in terms of today.

6 Mr. Bono, is that going to be
 7 sufficient?

8 MR. BONO: No, Your Honor. The question
 9 is: Was the witness prepared? And it just isn't
 10 Mr. Merideth's --

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SPECIAL MASTER POPPITI: I understand.
MR. BONO: -- actions today. It's the
. And he has testified now for three
Honor, I would like to address the DEC

SPECIAL MASTER POPPITI: I want you to do that, but in terms of addressing whether he is prepared or has been prepared or whether he is not prepared, I need your view, please, because that will make my read of it easier in no more than two pages. If one page can do it, that's fine. And if I have those transcripts, electronic -- how many pages do you have? Do you know? How many pages of transcript?

MR. MERIDETH: About 350 total.

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SPECIAL MASTER POPPITI: Okay. Well, if I have those electronically, I can assure you I am not going to read them tonight, but if they are at my desk first thing in the morning, I have an arbitration that will take me maybe two or three hours tomorrow, but it will get accomplished between now and mid afternoon tomorrow.

MR. MERIDETH: We can do that. May I make one request in the intervening period, and, that is: Because LPL is claiming that the number of days ought to be reduced, and to ensure that ViewSonic has an opportunity to question Mr. Kim, I would request that I suspend my questioning of Mr. Kim, give ViewSonic an opportunity to question him, so that if it is determined, as LPL wishes, that his deposition ought to be curtailed, at least ViewSonic would have had an opportunity to have questioned him.

questioned him. But I am afraid if we do that without an order from Your Honor, we are going to be -- the claim is going to be made by LPL that having stopped questioning him, we waived our right to continue, and I don't want to have that happen.

SPECIAL MASTER POPPITI: Mr. Bono

MR. BONO: I was intending to proceed

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this week as we had planned, Your Honor, and I understood that Mr. Miller was going to start his questioning tomorrow, and I don't have any problem with that, and we all reserve whatever rights we want without prejudice.

SPECIAL MASTER POPPITI: Is that satisfactory, Mr. Merideth?

MR. MERIDETH: No. I don't want to reserve our rights. I want to have an agreement that if the time is not shortened and there is time that's remaining, I will have an opportunity to take up all these questions that the witness wouldn't answer or couldn't answer.

MR. MILLER: Your Honor, I don't mean to interrupt. We have, based on Your Honor's ruling, we have a certain number of hours, let's say it's 50 hours total; obviously, we had anticipated we were going to split those hours. We are only at 18 hours, and, so, Mr. Merideth isn't even at the end of his half of those hours. We have been here this week. We would like very much to try to get some questioning in of Mr. Kim on behalf of ViewSonic, but, obviously, we are sensitive as

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22 well to the concern Mr. Merideth raised, which is, if he
 23 ceases now, that LPL will take the position that he
 24 doesn't have the right to continue to get up to half of
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1 the total allotted amount of time available for this
 2 deposition. And, so, we are, you know, we are sensitive
 3 to that.

4 We are kind of caught in the middle
 5 here. We'd very much like to take some testimony on the
 6 issues that affect us.

7 SPECIAL MASTER POPPITI: There is no
 8 need to be caught in the middle. I am being asked to
 9 perform some responsibility with respect to this
 10 deposition. The reason why it is being forestalled is
 11 because of the work that I am doing and that you have
 12 both asked me to do, and it seems to me that no one
 13 should be penalized as a result of that.

14 MR. MILLER: My request is that
 15 Mr. Merideth be allowed to suspend his questioning and
 16 that we be allowed to pick up our questioning when the
 17 deposition resumes for some period of time and that that
 18 suspension by Mr. Merideth be without prejudice to his
 19 right to continue for half of the total amount of
 20 allotted time of the deposition.

21 SPECIAL MASTER POPPITI: So ordered.

22 MR. MILLER: Thank you, Your Honor.

23 SPECIAL MASTER POPPITI: And you have
 24 got a transcript. Okay.

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1 First thing in the morning, and I think
 2 it will be important for me, if you haven't sought me out
 3 during the course of the day, once I get to the end of my
 4 responsibility, I will reach out to local counsel to
 5 convene everyone.

6 Let me just do this, while we are on the
 7 phone -- I don't recall when this arbitration is
 8 tomorrow. Give me a moment, please.

9 Counsel, this arbitration tomorrow is at
 10 2:00, but it should not take that long. My friends that
 11 are local counsel knows what a Court pointed arbitration
 12 for the Superior Court is, it's a service to the Court,
 13 it shouldn't take more than an hour or so, so I may be
 14 able to accomplish all of the work before that. If not,
 15 it will be shortly after.

16 When you electronically mail the
 17 transcripts to me, I want you also to mail them to Dube,
 18 dube@blankrome.com as well.

19 MR. MERIDETH: Could you repeat that,
 20 Your Honor?

21 SPECIAL MASTER POPPITI: Yes,
 22 dube@blankrome.com. So, one is coming to me and one is
 23 going to Dale Dube.

24 MR. MERIDETH: Just plain Dube, no

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1 initial?

2 SPECIAL MASTER POPPITI: That's correct.
 3 Let's deal with the DEC issue.

4 MR. BONO: Your Honor, this is Gaspare
 5 Bono again. Let me respond as briefly as I can to
 6 Mr. Merideth on this issue. We objected to the topic in

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7 the deposition notice concerning the DEC agreement, and
8 we stated that we were not presenting a witness, a
9 30(b)(6) witness on that topic, and Mr. Kim, thereby, was
10 not designated in any way, shape, or form as a 30(b)(6)
11 witness on this topic.

12 At the deposition today, the issue arose
13 as to the questions that Mr. Merideth was asking Mr. Kim
14 concerning the DEC agreement, and I asked Mr. Merideth to
15 limit his questions to Mr. Kim as an individual witness.
16 And with respect to certain questions, Mr. Merideth
17 declined to do that even though Mr. Kim was not
18 designated as a 30(b)(6) witness.

19 Under those circumstances, in order to
20 let the deposition continue, I felt I had no choice but
21 to give a very limited instruction to not answer the
22 question with respect to Mr. Kim's 30 -- a 30(b)(6)
23 capacity, but made it clear, and Mr. Merideth did ask him
24 as many questions as he wanted, about the DEC agreement

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1 in his individual capacity. That's what happened at the
2 deposition today.

3 At this point, we have not designated a
4 witness on that topic at all subject to our objection.

5 SPECIAL MASTER POPPITI: I was just
6 going to ask that. I understand you said you have
7 objected.

8 Have you moved for a protective order
9 with respect to that deposition topic?

10 MR. BONO: We have not as yet, Your
11 Honor. But we did not designate -- the point is --
12 SPECIAL MASTER POPPITI: I understand
13 that.

14 MR. BONO: Okay.

15 SPECIAL MASTER POPPITI: I understand
16 that he is not a 30(b)(6) witness as it relates to DEC,
17 and I also understand that he, at the same time, is
18 wearing a fact witness hat, and I understand, to the
19 extent that he has information as a fact witness, he
20 would be required to answer.

21 MR. BONO: And he did, Your Honor. To
22 the extent he had any knowledge, he did answer any and
23 all of Mr. Merideth's questions over the past two days
24 with respect to his personal knowledge or any knowledge

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1 he has as an individual with respect to the DEC
2 agreement.

3 There was no other limitation placed on
4 Mr. Kim's testimony today with respect to any other
5 development agreements or any other agreements. And, so,
6 their letter to Your Honor, quite frankly, is -- appears
7 to be overbroad of what actually happened in the
8 deposition. It was strictly limited only because he was
9 not designated as a 30(b)(6) witness on that topic. And,
10 so, therefore, Mr. Merideth trying to insist that he
11 answer as a 30(b)(6) witness was improper.

12 SPECIAL MASTER POPPITI: Mr. Merideth?
13 MR. MERIDETH: Yes, could I respond?

14 SPECIAL MASTER POPPITI: Sure.

15 MR. MERIDETH: In addition to the
16 designation specifically with regard to DEC, there are
17 two other designations, designation 10 A and 10 B.

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18 SPECIAL MASTER POPPITI: Just a second.
19 Let me get those in front of me, please. Hold one
20 moment.

MR. MERIDETH: Thank you.

22 SPECIAL MASTER POPPITI: Okay. I have
23 got ten. It's on page 8 of the amended notice of
24 deposition, topics seven through 12. I have 10 A in
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1 front of me.

MR. MERIDETH: 10 A and 10 B both

cover --

SPECIAL MASTER POPPITI: 10 A and 10 B.

5 MR. MERIDETH: Both these requests cover
6 the issues related to technology agreements of which we
7 have identified at least 10, not including the DEC
8 agreement, which may or may not contain provisions, like
9 the DEC agreement contains, that provide for the
10 ownership of intellectual property developed during the
11 course of the performance of the agreement.

12 All questions with respect to those
13 types of technology agreements, or other agreements that
14 might affect the ownership of intellectual property,
15 including the patents-in-suit, have -- are properly
16 noticed, and Mr. Kim has also refused, on the instruction
17 of his counsel, to answer those questions.

18 SPECIAL MASTER POPPITI: I am looking at
19 topic 10 A and B, and I have LPL's designation for
20 30(b)(6) topics in front of me, and the way I read it is
21 that Mr. Kim has been designated as a 10 A, 10 B 30(b)(6)
22 witness; is that not correct?

23 MR. BONO: Your Honor, that is correct,
24 and there was no such instruction to Mr. Kim on 10 A and

1 10 B. The instruction was, as I said, only with respect
2 to the DEC agreement. And --

SPECIAL MASTER POPPITI: But I think I just heard from Mr. Merideth, and correct me if I am wrong, sir, that 10 A and 10 B does not encompass DEC? Did I understand you correctly?

7 MR. MERIDETH: No, it does encompass
8 DEC, but it also encompasses ten other relevant
9 contracts.

12 MR. MERIDETH: It involves DEC and ten
13 other development contracts, and he refused to testify
14 about any of them based upon the instruction of counsel.
15 MR. BROWN: Your Honor, if you look at

15 MR. BONO: Your Honor, if you look at
16 the deposition notice, it has 10 A, 10 B, and 10 C.
17 SPECIAL MASTER POPPITT: I am looking

17 all of them. SPECIAL MASTER PUPPITI: I am looking at
18
19 MR. BONO: 10 C is the topic that deals

19 with DEC. It doesn't make any sense to interpret the
20 notice as Mr. Merideth now is trying to interpret it.
21
22 By looking at this notice, we understood
23 it to mean that 10 C was the topic relating to the DEC
24 agreement. Anyone -- and with respect to any of all of

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1 the other agreements that are covered by 10 A and 10 B,
2 the witness has been designated and is free to testify as

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3 a 30(b)(6) as to those agreements, and there is no such
4 instruction to limit the testimony.

5 MR. MERIDETH: We will have to submit
6 the transcript because we have a different view.

7 SPECIAL MASTER POPPITI: Well, let me
8 ask this question, then: Mr. Merideth, in looking at the
9 topics you have identified with respect to topic 10, it
10 is A, B, and C, there is no question that C specifically
11 relates to Digital Equipment Corporation, DEC; that's
12 correct, is it not?

13 MR. MERIDETH: Yes, sir.

14 SPECIAL MASTER POPPITI: Do I read,
15 then, the topics under 10 A and B -- I should read C
16 separately, should I not?

17 MR. MERIDETH: Yes. The fact that we
18 asked specifically about the DEC agreement doesn't limit
19 the testimony on 10 A and 10 B which relates generally to
20 the ownership interests and other technology agreements
21 which might affect ownership interest.

22 C asks about any agreements between LPL
23 and other persons, but it doesn't address the issue of
24 the effect of the DEC agreement on ownership, which is

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1 covered by A and B, which is the standing issue. He has
2 got to testify about that.

3 MR. BONO: Your Honor, Mr. Kim testified
4 extensively today with respect to ownership of the
5 patents at issue and the -- and the side mount patent at
6 issue. Mr. Merideth asked him innumerable questions
7 about the ownership issue, and Mr. Kim answered those
8 questions time and time again.

9 SPECIAL MASTER POPPITI: Just give me a
10 moment, please, because I am looking at the language in
11 10 A.

12 Well, as I read 10 A, 10 A does go to
13 the issue of ownership; do you both agree with that?

14 MR. MERIDETH: Yes, Your Honor.

15 MR. BONO: Yes, Your Honor.

16 SPECIAL MASTER POPPITI: 10 B goes to
17 the issue of certain technology; correct?

18 MR. MERIDETH: Yes, it does.

19 SPECIAL MASTER POPPITI: And agreements
20 with respect to that; correct?

21 MR. BONO: Yes, Your Honor.

22 SPECIAL MASTER POPPITI: And 10 C
23 specifically asks about agreements with DEC regarding the
24 development of technology; correct?

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1 MR. MERIDETH: Yes, Your Honor.

2 MR. BONO: That's correct.

3 SPECIAL MASTER POPPITI: As I would read
4 this notice, with its topics as I have read and you have
5 just described your agreement, he has been designated to
6 answer 30(b)(6) questions as it relates to -- and I
7 realize I am brushing this with a broad stroke, if you
8 will -- ownership issues and technology issues.

9 He has not been designated to talk
10 specifically about the DEC agreement insofar as that
11 relates to the development of any technology, etcetera.
12 So I expect that Mr. Kim is in the chair with respect to
13 any and all information relating to A and B. And if I

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14 need to measure question by question and see the
 15 objection, which, again, is not the way Delaware
 16 practices it, but I will review it for purposes of trying
 17 to keep this moving along and make some judgment with
 18 respect to that, I will do that.

19 If somebody can give me an example
 20 where, Mr. Merideth, you conclude that he was not
 21 answering by virtue of an instruction not to answer a
 22 question with respect to current and/or past ownership,
 23 etcetera, and any nondisclosure agreements, etcetera, can
 24 you point to an example now?

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1 MR. MERIDETH: Perhaps if you give me
 2 one second here.

3 Let me read you an example.

4 SPECIAL MASTER POPPITI: Okay. I missed
 5 that. I am sorry.

6 MR. MERIDETH: Just one minute.

7 SPECIAL MASTER POPPITI: Yes. And while
 8 you are looking for that, I mean, I really do think it's
 9 important to emphasize, again, the process that the
 10 District Court expects everyone to follow. When you have
 11 an opportunity to look at Judge McKelvie's decision, if
 12 you will take a look at the language in the Federal Rule
 13 decision cite at 575, let me just read a portion of this
 14 to you. "Instructions not to answer: Counsel may not
 15 instruct a witness not to answer a question unless, one,
 16 answering the question would require the disclosure of
 17 information that is protected from disclosure as
 18 privileged or work product; or, two, counsel intends to
 19 move promptly to terminate or limit examination pursuant
 20 to Federal Rule of Civil Procedure 30(d) in which case
 21 counsel shall immediately call the Court to request a
 22 time to present the motion."

23 So, I mean, I understand where we are in
 24 terms of the process of it all at quarter to eight on

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1 this beautiful wednesday, and I want to extend the
 2 appropriate courtesy to you to continue to hear this, but
 3 I don't have a motion for protective order in front of
 4 me. And I am not suggesting that I should, at this
 5 juncture, look at form over the substance of the concern
 6 that everyone has in terms of how this deposition should
 7 proceed.

8 MR. MILLER: While Mr. Merideth is
 9 looking at the transcript, on a related issue, if you are
 10 looking at this particular issue tomorrow, that is, it
 11 deals with the issues on Friday, not trying to advance
 12 it, but just so you understand.

13 SPECIAL MASTER POPPITI: Please don't do
 14 that.

15 MR. MILLER: At the December 28th
 16 hearing, there was a discussion about the production of
 17 the DEC agreement which was promised to be produced and
 18 that's on the agenda for Friday. Just so you know, you
 19 are going to hear it again on Friday.

20 SPECIAL MASTER POPPITI: I love to cook,
 21 I don't usually like leftovers, but I am happy to look at
 22 that issue.

23 MR. BONO: Your Honor, so, did I
 24 understand that, at this point in time, placing substance

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1 over form, that Your Honor has indicated that we have
 2 placed this issue concerning the DEC agreement before --
 3 SPECIAL MASTER POPPITI: I'd like
 4 Mr. Merideth and others to say, yes, you have, but they
 5 have the right to say, No, it hasn't been properly
 6 presented. We have been talking about it now for the
 7 past however many minutes and lines in this transcript.

8 MR. MERIDETH: I am sorry.

9 SPECIAL MASTER POPPITI: Mr. Bono wanted
 10 to know whether he is going to have to sit at the screen
 11 tonight and/or have somebody else at the screen
 12 generating a motion for protective order?

13 MR. MERIDETH: Well, I mean, we can
 14 cover other topics tomorrow, but we do need to get this
 15 resolved.

16 SPECIAL MASTER POPPITI: I understand
 17 that, and that's the issue. We are in the throws of --
 18 that's why I am asking you to look and give me an
 19 example, and I guess the other question that is
 20 appropriate: May I treat what we are doing as an
 21 application for protective order even though one has not
 22 been filed? And if you say, No, I'd like to see it in
 23 writing, I'd like to know what we are talking about. I
 24 will at least want to listen to your position with

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1 respect to that.

2 MR. MERIDETH: No, I don't want to
 3 create unnecessary formality or work.

4 SPECIAL MASTER POPPITI: Good.

5 MR. MERIDETH: The problem, however, is
 6 you have to see the testimony in its context in order to
 7 determine whether --

8 SPECIAL MASTER POPPITI: I understand
 9 that, and if that's necessary for me to do that, then, in
 10 conjunction with your asking me to see whether the
 11 witness was appropriately prepared, then another piece of
 12 that work for me to accomplish tomorrow morning into the
 13 afternoon is to also look at the issue with respect to
 14 DEC and to your assertion that he has not been responsive
 15 to questions that would appropriately be put to him with
 16 respect to DEC as it relates to topics A and B.

17 MR. MERIDETH: And I'd be happy to read
 18 to you now a section that I think is exemplary, although
 19 I think you need to look at all of it. The other problem
 20 is, you know, they can't just refuse not to appoint a
 21 30(b)(6) witness.

22 SPECIAL MASTER POPPITI: I understand
 23 that.

24 MR. MERIDETH: They are saying, Oh,

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1 well, we will just boycott the question, and, therefore,
 2 you don't ever have a right to ask the question.

3 SPECIAL MASTER POPPITI: There was no
 4 application for a -- I know you objected to it, but there
 5 was no application to the Court to say it's not an
 6 appropriate subject in this case, so, to me, we are a
 7 little late in the game for that. Go ahead, please.

8 MR. MERIDETH: I'd like to read this one
 9 to you. This pertains to a discovery -- I am sorry, an

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10 invention disclosure document in which a reference is
 11 made to side mount patents by competitors of either LGE
 12 or LPL, it's quite unclear, but let me go on.
 13 SPECIAL MASTER POPPITI: So that's under
 14 10 B?

15 MR. MERIDETH: Yes, 10 A and 10 B.
 16 SPECIAL MASTER POPPITI: A and B. Okay.
 17 MR. MERIDETH:

18 "QUESTION: Which of those competitors
 19 has side mounting patents as identified in Exhibits 11
 20 and 2?"

21 "ANSWER: At that time, or at the
 22 present time?"

23 "QUESTION: At that time.
 24 "ANSWER: At that time, it was not known

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1 which other competitors other than my own company had
 2 side mounting patents.

3 "QUESTION: So the application was
 4 necessary because it was a design around invention for
 5 competitors side mounting patents that you didn't know
 6 about; is that what you are telling me?"

7 "MR. BONO: Object. Object to the form
 8 of the question. Lacks foundation. Argumentative.

9 "THE WITNESS: Well, I am under the
 10 impression that, you know, you keep distorting what, you
 11 know, is being said here. I want to make it clear that
 12 what is meant here is, by what is indicated here is that
 13 side mounting patents -- first of all, side mounting
 14 patents was something that was owned by LG Phillips LCD
 15 at that time and nobody else has the patents even at the
 16 present time."

17 And I will intercede that that's
 18 contrary to the ruling of Judge Marshall in the Central
 19 District. But continuing.

20 "What is meant by what is indicated here
 21 in this document is that if any other competitor, any
 22 other competitor tried to avoid my own company's side
 23 mounting patents, then this was necessary --

24 MR. BONO: Your Honor, I hate to

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1 interrupt Mr. Merideth.

2 MR. MERIDETH: Let me finish, please.

3 MR. BONO: Nothing he is reading to you
 4 has anything to do with the DEC agreement.

5 MR. MERIDETH: I am getting there,
 6 please. I am putting it in context.

7 "QUESTION: Isn't it true, Mr. Kim, that
 8 Messers. Bovio and Frame had filed a patent application
 9 for side mounting prior to your co-inventor's completion
 10 of Exhibits 2 and 11?"

11 "ANSWER: I don't quite get it. What
 12 are you trying to drive at?"

13 "QUESTION: Isn't it true that Messers.
 14 Frame and Bovio had filed patent applications with
 15 respect to side mounting prior to the preparation of
 16 Exhibits 2 and 11?"

17 "ANSWER: I have absolutely no
 18 understanding about what you are mentioning in your
 19 question. Basically, what I need is for you to show me
 20 the actual patents for me to, you know, check up on it in

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21 what kind of a patent it may be.
 22 "QUESTION: So you are completely
 23 unaware of the fact that Messers. Frame and Bovio filed
 24 patent applications for side mounting?

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1 "Just as I told you, the side mounting
 2 patents is something that LG Phillips LCD has and is the
 3 invention of the company. My understanding tells me that
 4 there is no one else out there who has the side mounting
 5 patent.

6 "Are you familiar with the design and
 7 manufacturing agreement with DEC?

8 "MR. BONO: Object to the form of this
 9 question. Are you asking him, in his individual
 10 capacity?

11 "MR. MERIDETH: In any capacity, whether
 12 it's 30(b)(6) or --

13 "MR. BONO: We have been through this
 14 again, Mr. Merideth.

15 "MR. MERIDETH: I don't have to say it
 16 before each question, which I am going to do. You have
 17 put him up as a witness.

18 "MR. BONO: No, I didn't.

19 "MR. MERIDETH: But I am asking him
 20 about both, in his capacity as both.

21 "MR. BONO: Then I instruct the witness
 22 not to answer since he is not here as a 30(b)(6) witness
 23 on the topic of the manufacturing and design agreement
 24 with DEC. If you limit your question to his individual

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1 capacity, he is free to answer the questions to the
 2 extent of his knowledge."

3 So, clearly, the line of questioning
 4 relates to ownership, which is 10 A and B. It relates to
 5 the Bovio and Frame patent and it relates to the DEC
 6 agreement insofar as it effects ownership and joint
 7 technology agreements, and he absolutely refused to
 8 answer.

9 MR. BONO: Your Honor, he didn't refuse
 10 to answer. He answered Mr. Merideth's questions
 11 throughout this deposition with respect to his entire
 12 knowledge concerning the DEC manufacturing and design
 13 agreements. He gave all the information he has.

14 He was not designated as a 30(b)(6)
 15 witness as to the DEC agreement, but he provided all the
 16 information he had in his individual capacity concerning
 17 the DEC agreement.

18 I must point out that what Mr. Merideth
 19 said about the ruling in the California court with
 20 respect to ownership is absolutely incorrect.

21 Judge Marshall did not rule that
 22 ownership of the patents are in DEC. She made no such
 23 ruling.

24 What she ruled was specifically limited

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1 to the question of whether LG Phillips had standing to
 2 enforce these patents against another entity, C.P.T.,
 3 Chunghwa Picture Tubes, in that litigation and with
 4 respect to no other party.

5 And, in fact, Mr. Merideth was

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6 co-counsel in that case, defending another defendant, and
 7 Judge Marshall said, in court, on the record, "I am
 8 making no ruling with respect to any other party or with
 9 respect to LG Phillips' rights to enforce this patent as
 10 to any other party. My ruling is limited to LG Phillips'
 11 rights standing, not ownership, standing to enforce the
 12 patent only with respect to C.P.T. in that case."

13 MR. MERIDETH: You are reading from the
 14 order that was amended and it was amended to add Tatung
 15 as a party against whom the patent could not be enforced,
 16 so I am sorry, but you are not -- I don't mean to
 17 interrupt, but you are not reading from the correct
 18 order.

19 MR. BONO: And we are not seeking to
 20 enforce, in this case, the side mount patent against
 21 Tatung.

22 So, what does it have to do with this
 23 case, Mr. Merideth?

24 SPECIAL MASTER POPPITI: Counsel, you

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1 are really getting, I think, a little far afield without
 2 my having a record in front of me to deal with the issue
 3 with respect to DEC. I think I need to have -- I
 4 understand the issue as it was raised in Mr. Cottrell's
 5 letter. I have some sense as to what the response is. I
 6 understand the topics as they have been specified. I
 7 understand the agreement with respect to topics A and B
 8 and C, and I expect, because you are in dispute, I have
 9 got to make some judgment as to whether the questions
 10 where Mr. Kim was instructed not to answer are questions
 11 that he should answer, and if the answer is, I don't have
 12 anymore information than I have already given you, then
 13 that's the answer.

14 If there is an issue as to whether or
 15 not he has been properly -- prepared himself to answer
 16 topics A and B, then I need to know that as well.

17 Mr. Bono, what I heard you say, against
 18 the backdrop of your instruction to your witness not to
 19 answer, I understood what you just told me is he didn't
 20 have anymore information.

21 MR. BONO: That's correct, Your Honor,
 22 but he testified as to all the information he had.

23 SPECIAL MASTER POPPITI: If that's the
 24 case, then it seems to me that he needs to -- a question

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1 should be posed, he should be permitted to answer that
 2 question, and then the issue may be: Has he prepared
 3 himself properly to answer questions under topic A and B?

4 MR. BONO: And he is free -- Your Honor,
 5 Mr. Merideth did not ask him questions under A and B as
 6 to any of those other agreements. So, he is -- he is --

7 MR. MERIDETH: That's --

8 SPECIAL MASTER POPPITI: I am sorry,
 9 Mr. Merideth, I didn't hear you, sir:

10 MR. MERIDETH: That's not correct. I
 11 think, rather than debating about who did what, we ought
 12 to look at the transcript.

13 SPECIAL MASTER POPPITI: I agree.

14 MR. MERIDETH: Now, we have the
 15 additional problem here is that LPL is being very coy in
 16 not designating anybody as a 30(b)(6) witness on the

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17 subject of DEC. And, so, what, you know, we need to have
 18 a designation made. Whether it's Mr. Kim or somebody
 19 else, we got to get that witness here and he's got to
 20 testify.

21 MR. BONO: Your Honor, the issue has now
 22 been placed before Your Honor for a ruling on whether
 23 that subject matter is the proper subject matter of a
 24 30(b)(6) witness.

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1 SPECIAL MASTER POPPITI: I think not,
 2 sir. That's not been placed before me, not at all. I
 3 don't have documents in front of me to show me when you
 4 objected to the topic, and I certainly don't have,
 5 following on that objection, an appropriate application
 6 to the Court to preclude that topic from being developed
 7 during the course of 30(b)(6) deposition testimony.
 8 That's not what this record is.

9 This record, as it presently stands, and
 10 the matter that is squarely before me by your courteous
 11 agreement with each other, notwithstanding the fact that
 12 there was no application to the Court during the course
 13 of this deposition for a protective order, is whether or
 14 not the witness is, that is in the chair, has been
 15 instructed inappropriately to not answer questions that
 16 have been posed, No. 1, and if he has exhausted his
 17 memory with respect to those questions, whether he has
 18 appropriately prepared himself or been prepared to answer
 19 questions under 10 A and 10 B.

20 But I do not have before me any
 21 application dealing with the appropriateness of 10 C
 22 other than whatever document you filed when you served
 23 it, saying, I object to this.

24 You know and I know that it does not

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1 place the matter before the Court. We are in the throws
 2 of this deposition. I am not going to preclude you from
 3 filing anything, but I am going to tell you that I don't
 4 expect that an application, at this juncture, is timely.
 5 I can be convinced otherwise if you show me some
 6 appropriate authority.

7 It's not like we are the week before
 8 with all of the pressure that you all have been under
 9 over these past couple of months. We are now in the
 10 process of and there is no application before the Court
 11 to preclude the development of 30(b)(6) testimony under
 12 topic 10 C.

13 MR. BONO: Your Honor, I would like the
 14 opportunity --

15 SPECIAL MASTER POPPITI: Sir, I just
 16 said I am not going to preclude you, but I have also
 17 suggested to you what my inclination is.

18 MR. BONO: Your Honor, we will be happy
 19 to designate a witness, but I believe the witness, the
 20 appropriate witness that we would designate is not John
 21 Kim, who is being deposed this week, but would be
 22 Mr. J.F. Kim, who is being deposed next Thursday and
 23 Friday.

24 SPECIAL MASTER POPPITI: Well, if that

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1 is the case, then, if you are prepared to do that, then I

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2 will look for that designation sometime during the course
3 of the morning tomorrow.

4 MR. BONO: We will be happy to do that.

5 SPECIAL MASTER POPPITI: I can take your
6 comment on this record that he will be designated. I
7 want you to be formalizing that in the appropriate
8 fashion tomorrow morning.

9 MR. BONO: We will be happy to do that,

10 Your Honor.

11 SPECIAL MASTER POPPITI: Mr. Merideth.

12 MR. MERIDETH: It would also help to get
13 the DEC agreement that was promised a month ago.

14 SPECIAL MASTER POPPITI: Mr. Bono.

15 MR. BONO: I thought that was going to
16 be something that you all were going to talk about on
17 Friday, Your Honor.

18 MR. MERIDETH: You already promised to
19 give it to us. It's not a matter of discussing it on
20 Friday.

21 SPECIAL MASTER POPPITI: Let's do this,
22 counsel: That issue is one that you can do off record.
23 If we are teed up on Friday to do it, I will do whatever
24 I need to do and do it on the record. There will be no

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1 need for me to write. But I expect if there was
2 discussion and there was a promise, that that should be
3 something that's honored. If there wasn't, I will deal
4 with it on Friday.

5 MR. CHRISTENSON: If I can just speak
6 briefly on that issue?

7 SPECIAL MASTER POPPITI: Sure.

8 MR. CHRISTENSON: There was a discussion
9 about the DEC agreement briefly at the December 28
10 teleconference before Your Honor. And the question arose
11 whether we were going to produce a copy of the DEC
12 agreement, which was the only agreement specifically
13 identified by the defendants at that time, and it related
14 to document request No. 102 from ViewSonic. And, at that
15 time, I said that we would not object to producing the
16 DEC agreement because -- and that was an agreement that I
17 specifically was aware of. I didn't have it in front of
18 me at the time of the conference.

19 Subsequently, we located a copy of the
20 agreement which was produced by a third party, C.P.T., in
21 the California case, and it was designated "confidential"
22 in that case under a protective order in that case.

23 First of all, the agreement, just so you
24 know, is from 1996, and it's an agreement between LGE, a

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1 non-party here, and DEC. The fact that it's a 1996
2 agreement, I didn't realize it at the time, makes it
3 non-responsive to request No. 102 which asks for
4 documents from the time period since January 1, 1997.
5 But that's not the reason I didn't go ahead and produce
6 it. The reason that I didn't go ahead and produce it is
7 because not only is it not responsive, but it's
8 designated "confidential" by C.P.T. This is not a
9 document that was produced by LPL. LPL does not have a
10 copy of this agreement in its possession.

11 SPECIAL MASTER POPPITI: Have you told
12 Mr. Merideth that before this?

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13 MR. CHRISTENSON: I have, Your Honor.
14 And not only did I tell him that, but I offered to
15 Mr. Miller, quite some time ago, to request permission,
16 if he wanted me to do so, from C.P.T., to produce this
17 document as I would have to do under the protective order
18 that I have reviewed in the California case.

I wasn't counsel in that case, but I have the protective order and I intend to comply with it, particularly given the circumstances that we faced so far in this case of unfounded accusations of not complying with protective orders.

24 SPECIAL MASTER POPPITI: I understand.

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1 MR. CHRISTENSON: And we have never got
2 any response, until the most recent status report to Your
3 Honor, where they injected this issue saying that they
4 didn't think it was protected under the protective order,
5 I believe, and they said that we should produce it
6 because we agreed regardless. And I can't be in the
7 position of violating an order of the California Court,
8 Your Honor.

I would also note C.P.T. is a subsidiary of Tatung Company, and, so, Tatung may already have this document in its possession and may not need it from us.

12 SPECIAL MASTER POPPII: If you just tee
13 it up on Friday, I will deal with it on Friday.
14 MR. KRETSMAN: This is Mark Kretzman. I

14 MR. KREISMAN: This is Mark Kreisman. I
15 am also counsel for Tatung. And the misstatement that
16 C.P.T. is a subsidiary of Tatung is something that I just
17 can't let go unchallenged on the record. Your Honor.

17 can't let go unchallenged on the record, Your Honor. 18
18 SPECIAL MASTER POPPITI: Your record is
19 here.

19 here: 20 MR. KREISMAN: Thank you.

20 MR. KREISMAN: Thank you.
21 SPECIAL MASTER POPPITI: I will deal
22 with the issue on Friday. And you are telling me that,
23 again, knowing that I have this status report here,
24 knowing that we have already jumped into it at paragraph

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1 four, you have fleshed out your respective positions to
2 the extent that you have just done it again with respect
3 to DEC; is that correct?

4 MR. CHRISTENSON: Yes, Your Honor. I am
5 not trying to delay this issue at all. If you want to
6 address it further now, that's fine.

19 protective order. MR. MERIDETH: I don't think anyone
20 disputes that, Your Honor. And the problem here is no
21 one ever told me that they weren't going to produce the
22 DEC agreement because of some protective order. The last
23 thing I heard is that they were going to produce it. And

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24 I would like to ask Mr. Christenson what steps he has
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1 taken to contact counsel for C.P.T. to get consent to
 2 release the document?

3 MR. MILLER: As well, I did report to
 4 Mr. Christenson that I had been in contact with counsel
 5 for C.P.T. who advised us that a copy of the DEC
 6 agreement, or at least some portion of it, a significant
 7 portion of a copy of the DEC agreement had been filed,
 8 not under seal, with the California Court during the
 9 California litigation where McKenna, Long and Howry were
 10 the counsel, we were not counsel, and suggested that he
 11 find it through that process and/or working with the
 12 Howry firm.

13 We have not gotten that agreement from
 14 any -- from LG, and, so, we are in a situation where we
 15 don't -- where, you know, as the outsiders, we don't have
 16 it, so we need to try to address this issue. It is teed
 17 up for Friday, I believe.

18 SPECIAL MASTER POPPITI: I don't know
 19 how much more help I can be. If the document was part of
 20 the public record, then that's easy. I can't help
 21 measure that because I have not been asked to, and I am
 22 hoping you would not ask me to go through the docket and
 23 determine whether or not this particular discrete
 24 document was filed in public, if you will, in the public

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1 record.

2 If, on the other hand, it was filed
 3 under one of the terms of the protective order, it is not
 4 for me to make any judgment whatsoever as to whether the
 5 parameters of the protective order cover the document,
 6 No. 1, or whether there is an opportunity to use a
 7 document. That judgment has to be made by the Court that
 8 entered the protective order, or by the parties, if the
 9 parties are permitted to do that, after litigation has
 10 finished.

11 So, I am not sure what else I can do for
 12 you on Friday. Tell me what I can do.

13 MR. MILLER: Let me make this proposal,
 14 I guess. It is teed up for Friday. I don't know that
 15 there is anything, as you are saying, more to do. I will
 16 contact the C.P.T. Lawyers in Los Angeles and see if we
 17 can get -- if they will send us a copy or if we can get a
 18 copy that was in the public record.

19 If LPL doesn't have any other copy, I
 20 guess we can work off of that, but let's at least get
 21 that document and circulate it and see if there is a way
 22 to get it. They advised me it was available through that
 23 process. Obviously, we were not counsel, so we didn't
 24 have, nor did we have the desire to go through the

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1 voluminous filings in the case, so we will take the
 2 laboring order tonight to call them and see if we can get
 3 it, and, if so, I will report that to Mr. Christenson
 4 tomorrow when we discuss the other issues.

5 SPECIAL MASTER POPPITI: That's great.

6 It seems to me that's, in light of what you have
 7 described, it seems to me that somebody needs to take the
 8 laboring order, as you just suggested, and get it done.

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9 MR. MILLER: I will do that, Your Honor.
10 SPECIAL MASTER POPPITI: And then we
11 will just use Friday as status unless somebody thinks
12 there is something that I can do to impact on the fact
13 that that document does not exist in this docket.

14 MR. CHRISTENSON: Thank you, Your Honor.
15 SPECIAL MASTER POPPITI: Are we
16 finished?

17 MR. MILLER: One last question, and,
18 that is, and I am not sure where in the point of order,
19 there are a number of other categories for which LPL
20 merely refused to designate a witness.

21 Is that something we need to file a
22 motion to compel or --

23 SPECIAL MASTER POPPITI: You know, I
24 would like you all to deal with that promptly. If it

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1 cannot be dealt with -- and by "promptly," I mean during
2 the course of the expected long business day that you are
3 going to have tomorrow, then I want to be aware of that
4 on Friday, and I will move everyone in the appropriate
5 direction.

6 MR. MILLER: Thank you, Your Honor.

7 SPECIAL MASTER POPPITI: Anything else
8 for this evening, then, please?

9 MR. CHRISTENSON: I think all of the
10 other remaining issues we have can roll over until
11 Friday.

12 SPECIAL MASTER POPPITI: Okay. Thank
13 you very much. I look forward to the submission tomorrow
14 and working with you again on Friday.

15 (The hearing was concluded at 8:10 p.m.)

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1 C E R T I F I C A T E .
2

2 STATE OF DELAWARE:
3

3 NEW CASTLE COUNTY:

4 I, Renee A. Meyers, a Registered Professional
5 Reporter, within and for the County and State aforesaid,
6 do hereby certify that the foregoing hearing was taken
7 before me, pursuant to notice, at the time and place
8 indicated; that the testimony was correctly recorded in
9 machine shorthand by me and thereafter transcribed under
10 my supervision with computer-aided transcription; that
11 the foregoing hearing is a true record of the testimony
12 given; and that I am neither of counsel nor kin to any
13 party in said action, nor interested in the outcome
14 thereof.

15 WITNESS my hand and official seal this 1st day
16 of March A.D. 2007.

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19 RENEE A. MEYERS
20 REGISTERED PROFESSIONAL REPORTER
21 CERTIFICATION NO. 106-RPR
22 (Expires January 31, 2008)
23
24